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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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In the Matter of

Amendment of Part 90 of the Commission's
Rules to Adopt Regulation for Automatic
Vehicle Monitoring Systems

PR Docket No. 93-61

PETITION OF HENNEPIN COUNTY FOR PARTIAL RECONSIDERATION

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Summary

In its Second Report and Order, the Commission determined that under the Communications Act's Section 309(j), as amended by the Balanced Budget Act of 1997, the Commission must resolve mutually exclusive LMS license applications by competitive bidding, and that the exemptions listed in §309(j)(2) do not apply. On reconsideration, the Commission should amend its rules to grant the exemption from competitive bidding contained in §309(j)(2) in instances where the applicant intends to use LMS in a non-commercial manner to perform public safety duties to protect the life, health and property of its citizens.

Reconsideration is warranted for the following reasons:

- (1) The Balanced Budget Act of 1997 amended the Communications Act to require competitive bidding of mutually exclusive licenses unless the license is for a non-commercial public safety radio service.
- (2) Petitioner's planned use of LMS spectrum meets the Communication Act's criteria for a public safety radio exemption from competitive bidding.
- (3) Application of the public safety exemption to the LMS auction is consistent with the Commission's objective of providing public safety providers greater access to new technologies.
- (4) Use of commercial LMS service for public safety purposes is not cost effective and undermines a local government's control of public safety resources.
- (5) The Commission failed to adequately explain why the exemptions found in §309(j)(2) of the Communications Act do not apply to the auction of LMS spectrum.

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Hennepin County hereby petitions for partial reconsideration of the Second Report and Order in this proceeding, FCC 98-157, released July 14, 1998.

I.

Statement of Interest

Hennepin County ("HC" or "Petitioner") is responsible for providing public safety services to protect the safety of its citizens' life, health and property. HC wants to obtain an LMS license to enhance the effectiveness of its public safety services by utilizing the unique characteristics of LMS technology. The LMS auction rules set forth in the Commission's Second Report and Order ("Second Report") fail to provide a mechanism whereby HC can exercise the statutory exemption from competitive bidding for public safety radio services. This rule seriously jeopardizes Petitioner's ability to obtain LMS spectrum to enhance its public safety capabilities.

II.

Background

A. Hennepin County, Minnesota

Hennepin County, established by territorial legislature in 1852, forms part of one of the nation's major metropolitan areas with Minneapolis as its largest city. HC has a total area of 611 square miles and a current population of approximately 1.1 million people. There are 45 cities and one township in the County. HC is the most populous of Minnesota's 87 counties with about 23% of the State's population.

HC is currently in the midst of a capital improvement program to refurbish existing public safety facilities and enhance public safety services. As part of the County's public safety facilities improvement program, the County Board approved a project to demonstrate the feasibility of using 900 MHz spread spectrum radio technology to track emergency vehicles and to help enforce location restrictions on domestic abuse and other offenders. Subsequently, the County Board approved a contract to conduct a two-phase project to demonstrate the technology, which was completed by September 1997. In October 1997, the HC Board directed staff to prepare a contract to develop an LMS production system (Phase III) during 1998 and to implement a pilot version of the system in a portion of the County (Phase IV) in 1999. The Board approved the contract in December 1997. The project involves policy oversight by the Joint Committee on Community Corrections (involving four County Commissioners and four District Court judges) and management oversight by a committee of seven key County staff.

B. Role of LMS in Protecting the Safety of Life, Health and Property

As currently envisioned, LMS will help HC protect the safety of life, health and property in two distinct areas: (1) emergency vehicle location, and (2) community corrections. The public

interest will be seriously harmed if the Commission's auction rules prevent HC from providing these critical public safety services.

1. Vehicle Location Applications of LMS.

LMS will enhance the ability of HC and its municipalities to locate and dispatch vehicles in mutual aid situations (i.e., situations in which HC calls on other local governments to provide emergency services within County service areas). Mutual aid could involve one or more of the following:

- **Ambulances.** Generally, there are multiple emergency medical service (EMS) providers serving different parts of the metropolitan area, and each EMS provider has an assigned operating area. Because the EMS providers each have their own radio communications systems, it is not always clear to "911" operators and EMS dispatchers which ambulance is closest to an accident scene and in the best position to aid an accident victim. Use of LMS will enable multiple EMS dispatchers to locate their available vehicles relative to an accident scene to better determine which EMS provider should respond to the call.
- **Fire Department Equipment.** Most of the County's municipalities have their own fire fighters that serve and operate within that city's jurisdiction. On various occasions, fire fighters from one city are called upon to help fire fighters in another city -- or an unincorporated area of the County -- respond to fire emergencies. Use of LMS will enable fire dispatchers to locate available fire trucks and engines relative to a fire to better coordinate mutual aid responses to such emergencies.

- **Police Vehicles.** Most municipalities within the County have their own police forces that operate primarily within their city's jurisdiction. Occasionally, police from one city are called upon to help police in another city -- or an unincorporated area of the County -- respond to law enforcement emergencies. Use of LMS will enable police dispatchers to locate available squad cars and other police vehicles relative to a crime scene and better coordinate mutual aid responses to such emergencies.
- **Snowplows.** HC is responsible for snow plowing both County roads and city streets within the County. Use of LMS will enable dispatchers to locate available snowplows and other public works vehicles relative to snow clearance routes to better coordinate response to snow emergencies.

2. Community Corrections Applications of LMS.

It costs HC \$84 a day to incarcerate an offender in the Adult Correctional Facility. It costs HC about \$14 a day to supervise an offender on intensive probation. Preliminary estimates indicate that it would cost \$10 - \$14 per day to monitor each offender supervised with LMS. This economic advantage, along with a need to find solutions to jail overcrowding and anticipated growth in the jail population, means that HC -- and many other state and local governments -- could save substantial amounts of taxpayer dollars by utilizing LMS to support pre-trial release, probation, and parole programs. Use of LMS will (a) help judges, probation and parole officers, prosecutors, police and sheriffs enforce court-ordered location restrictions on criminal offenders and (b) provide early warnings to identified victims when they are in potential danger because offenders have encroached restricted areas.

C. Commission's Analysis Regarding the Auctionability of LMS Spectrum

In its 1995 LMS Report and Order ("Report and Order"), the Commission decided that 47 U.S.C. 309(j) required use of competitive bidding to select from mutually exclusive applications for multilateration LMS licenses.¹ The Commission concluded, "(1) that its decision to offer multilateration LMS licenses on an exclusive basis makes it likely that mutually exclusive applications for such licensees will be filed; (2) that multilateration LMS licenses will be used principally to offer for-profit, subscriber-based services; and (3) that the use of

¹ Amendment of part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Report and Order, PRR Docket no. 93-61, 10 FCC Rcd 4695, ¶¶ 53-57 (1995) ("Report and Order").

At the time of the Report and Order 47 U.S.C. 309(j) read as follows:

(1) General authority

"If mutually exclusive applications are accepted for filing for any initial license or construction permit which will involve a use of the electromagnetic spectrum described in paragraph (2), then the Commission shall have the authority, subject to paragraph (10), to grant such license or permit to a qualified applicant through the use of a system of competitive bidding that meets the requirements of this subsection.

(2) Uses to which bidding may apply

"A use of the electromagnetic spectrum is described in this paragraph if the Commission determines that –

- (A) the principal use of such spectrum will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers in return for which the licensee –
 - (i) enables those subscribers to receive communications signals that are transmitted utilizing frequencies on which the licensee is licensed to operate; or
 - (ii) enables those subscribers to transmit directly communications signals utilizing frequencies on which the licensee is licensed to operate; and
- (B) a system of competitive bidding will promote the objectives described in paragraph (3)."

competitive bidding for these licenses will promote the public interest objectives set forth in Section 309(j)(3).”²

Subsequently, Congress enacted the Balanced Budget Act of 1997 (“BBA”), which amended §309(j)(1) and (2) to require competitive bidding in situations involving mutually exclusive licenses with a few limited exceptions.³ The exceptions include exemptions from competitive bidding for license applications involving public safety services, digital television service and non-commercial educational or public broadcast stations.⁴ In September of 1997 the Commission released its Memorandum Opinion and Order and Further NPRM and tentatively concluded that the LMS auction would follow the general competitive bidding procedures of Part 1, Subpart Q.⁵ Comments were requested by November 20, 1997.⁶ The Commission then altered Part 1, Subpart Q to conform to the statutory requirements of §309(j) on December 18, 1997.⁷

No comments were filed regarding the use of competitive bidding to auction LMS spectrum and the Commission concluded that, “the Budget Act provides that all licenses and construction permits for which mutually exclusive applications are accepted, with certain exceptions not relevant here, shall be granted by means of competitive bidding. We therefore

² Amendment of part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Memorandum Opinion and Order and Further Notice of Proposed Rule Making, PR Docket No. 93-61, 12 FCC Rcd 13942, ¶72 (1997) (“Memorandum”).

³ Balanced Budget Act of 1997, P.L. 105-33, § 3002, 111 Stat. 251 (1997) (“BBA”).

⁴ *Id.*

⁵ Memorandum, *supra* note 2 at ¶ 74.

⁶ *Id.* at ¶ 83.

⁷ Amendment of Part 1 of the Commissions Rules -- Competitive Bidding Procedures, Third Report and Order, WT Docket No. 97-82; 63 Fed Reg 10, 2315 (1997) (Codified at 47 C.F.R. §1.2101 *et. seq.*).

believe that we lack discretion to resolve mutually exclusive LMS license applications by any means other than competitive bidding.”⁸

III.

Discussion

A. Application of the Exemption to the LMS Auction is Necessary to Comply With Congress’ Intent.

Last year Congress rewrote the provision of the Communications Act that gives the Commission authority to conduct spectrum actions. In amending the Act Congress balanced its policy favoring auctions against other important public interest objectives. Chief among these is the need to ensure public safety.

Prior to passage of the BBA, Congress required the Commission to decide whether to apply competitive bidding based on guidelines set forth in 47 USC §308(j)(2). That section required an evaluation of whether: 1) the principal use of the spectrum is reasonably likely to involve the licensee receiving compensation from subscribers for services involving the spectrum; and 2) competitive bidding would promote the objectives of rapid deployment of new technology, economic opportunity, recovery for the public of a portion of the value of the spectrum, and efficient use of the spectrum.⁹ In determining “principal use”, the Commission chose to evaluate spectrum use generally rather than examine applications on an individual basis.¹⁰ Based on this interpretation, the Commission generally denied requests to apply

⁸ Amendment of part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Second Report and Order, PR Docket no. 93-61, FCC 98-157, ¶¶ 8-9 (1998) (“Second Report and Order”).

⁹ 47 U.S.C. §309(j) (1995), (*See supra* note 1).

¹⁰ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Second Report and Order, PR Docket No. 93-253, 9 FCC Rcd 2348, ¶¶ 30-36 (1994).

exemptions from competitive bidding to auctions of spectrum it determined would be used primarily for commercial purposes.¹¹

The BBA's amendments to §309(j) removed the principal use test. Under the BBA, initial applications that are mutually exclusive must be subject to competitive bidding unless they qualify for a specific exemption for public safety radio services, initial licenses for digital television service, or noncommercial educational and public broadcast stations.¹² Because Congress removed the principal use test from the statute, the Commission no longer has a statutory basis for determining use of an entire range of spectrum based on whether a majority of potential licensees intend to offer commercial service. The Commission should instead evaluate spectrum use on a case by case basis, and where appropriate, allow applicants fitting the criteria of the express exemptions in §309(j)(2) to obtain licenses without engaging in competitive bidding.

The issue of applying a §309(j)(2) exemption is also before the Commission in the case of "Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses."¹³ In that proceeding, the Commission has opted to seek additional comments on the issue of the exemption's applicability to commercial spectrum. Commissioners Harold

¹¹ *Id.* In prior rulemakings, the Commission has rejected arguments that private radio services, typically exempt from the competitive bidding process, could use their exemption to obtain spectrum in what was considered spectrum for a commercial purpose. The law and facts of this case compel a different outcome. The Commission reasoned that commercial PCS service providers could satisfy the needs and requirements of private radio groups and that competition among commercial providers would control price. Similar arguments made by the public safety community also fell on deaf ears, although the Commission did not specifically rule on the issue.

¹² BBA, *supra* note 3.

¹³ Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, First Report and Order, MM Docket No. 97-234, FCC 98-194 (August 18, 1998).

Furchtgott-Roth and Gloria Tristani, however, dissented from this portion of the Commissioners decision. Commissioners Furchtgott-Roth and Tristani concluded that the statutory language of the exemptions is clear and that a license meeting the criteria of the exemption in §309(j)(2) cannot be subject to competitive bidding.¹⁴ Petitioner submits that the interpretation given by Commissioners Furchtgott-Roth and Tristani is the correct one, and that the Commission must reconsider its rules to permit licensing of applicants for LMS spectrum that are exempt from competitive bidding.

This conclusion is further supported by the legislative history of the BBA. Although the BBA represents a policy conclusion that, in general, spectrum auctions best serve the public interest, Congress recognized that the public interest also requires a few narrow exemptions to auctions. Licenses for public safety radio service is one of them. But Congress did not intend the exemption from competitive bidding to apply only to specifically allocated public safety spectrum. Rather, in its Conference Report to the BBA, Congress specifically states that, "the public safety radio services exemption described herein is much broader than the explicit definition for 'public safety services' contained in section 3004 of this title."¹⁵ To be consistent with the Conference Report the exemption must extend beyond specific spectrum allocations for public safety and encompass any license for spectrum that meets the criteria of §309(j)(2). The Second Report and Order contradicts this interpretation by failing to make provision for the exercise of the public safety exemption. Petitioner submits that the Commission should

¹⁴ Statement of Commissioners Harold Furchtgott-Roth and Gloria Tristani, Dissenting in Part, In the Matter of Implementation of Section 309(j) of the Communications Act , MM Docket No. 97-234 (August 18, 1998).

¹⁵ H.R. Conf. Rep. No. 105, 105 Cong., 1st Sess. 217, 572 (1997).

reconsider its position to comply with Congress' express intent to exempt public safety radio services from competitive bidding.

B. HC's Proposed Use of LMS Spectrum Meets the Criteria of the Communications Act and the Commission's Rules

The statutory exemptions from competitive bidding are found in section 309(j)(2) of the Communications Act and reflected in the Commission's rules for Competitive Bidding Proceedings in Section 1.2102. The rule provides for an exemption from competitive bidding for "Public safety radio services...that (i) are used to protect the safety of life, health, or property; and (ii) are not commercially available to the public."¹⁶ HC's proposed use of LMS service meets these criteria and therefore should not be subject to competitive bidding.

First, the LMS service to be provided by HC qualifies as a public safety radio service. HC plans to apply for a spectrum license to support a LMS system for use by its fire, safety, medical and corrections service providers. LMS will provide critical data regarding the location of vehicles, or in the case of corrections, personnel, to enhance the ability of HC's public safety services to perform such duties as emergency first response. LMS serves this function by providing dispatchers with constant, accurate and reliable information including the proximity of police cars, ambulances or fire trucks to reported emergencies.

Although the Commission generally views public safety radio services as primarily voice communications, LMS provides public safety service providers with critical information to support their primary mission of protecting life, property and health. In fact the Commission's own rules contemplate use of LMS for public safety purposes. Although no spectrum is

¹⁶ 47 CFR §1.2102(b).

allocated for LMS use in the Part 90 rules for Public Safety purposes, LMS services in the 902-928 MHz band are explicitly mentioned in §90.20(f)(3) as an exception to the limitation that “only two frequencies or pairs of frequencies in the paired frequency mode of operation will be assigned for mobile service operations by a single applicant in a given area.”¹⁷ The inclusion of LMS as an exception to the paired frequency limitation demonstrates that LMS is viewed as a legitimate public safety radio service.

Second, HC’s sole purpose in using LMS spectrum is to protect the safety of life, health and property of its citizens. As described in the background section above, the LMS service to be provided under HC’s license would be used to track vehicles and personnel within the scope of the county’s fire, rescue, medical, police and corrections responsibilities. These services form the traditional bulwark for accomplishing local government’s role in protecting life, health and property.

Third, HC’s proposed LMS system would not be commercially available to the public. Although more and more government functions are being privatized, the traditional services of police, fire, ambulance and corrections generally remain under the control and authority of government. HC will not make LMS available to the general public on a subscriber or fee-for-service basis.

Since HC’s planned use of LMS spectrum meets the criteria of §1.2102, Petitioner argues that the Commission should provide a mechanism whereby HC can exercise the exemption to obtain LMS spectrum.

¹⁷ See, 47 CFR §90.17(e) (Local Government Radio Service), 90.19(e) (Police Radio Service), 90.21(e) (Fire Radio Service), 90.23(e) (Highway Maintenance Radio Service), 90.25(e) (Forestry-Conservation Radio Service), 90.27(e) (Emergency Medical Radio Service).

C. Application Of The Exemption To The LMS Auction Is Consistent With The Commission's Stated Public Safety Policy Objectives

Allowing HC to exercise the public safety exemption to obtain a LMS license would be consistent with the Commission's objective of providing public safety service providers with greater access to new technologies. The Commission has repeatedly acknowledged a need for additional spectrum and future flexibility to avail the public safety community of new developments in technology.¹⁸ Unfortunately, since only the 902 – 928 MHz band is allocated for LMS services, HC must participate in the auction in order to utilize LMS. In earlier proceedings, parties recommended that alternative or additional spectrum should be made available for LMS services since services such as Government radiolocation systems and industrial, scientific, and Medical (ISM) equipment are also designated for the 902-928 MHz band, but those requests were denied by the Commission.¹⁹ Public safety service providers looking to utilize LMS services are thereby required to participate in the LMS auction or risk losing access to LMS technology. The Commission must reconsider its rule to permit LMS licenses outside of the competitive bidding process if it is going to be faithful to its policy of increased flexibility and Congress' express intent that the public safety exemption should apply broadly.

D. Commercial LMS Service Would Not Adequately Serve HC's Public Safety Needs

The Commission has denied application of competitive bidding exemptions in the past based in part on the argument that commercial service providers can meet the service demands

¹⁸ Keynote Address of Commissioner Gloria Tristani before the 64th Annual Conference of the Association of Public Safety Communications Officials-International (APCO), August 10, 1998.

¹⁹ Report and Order, *supra* note 1 at ¶¶ 17-18.

and criteria of traditionally exempt groups.²⁰ In the case of LMS, reliance on commercial service providers to handle the needs of local governments wishing to deploy LMS for public safety purposes would be both economically disadvantageous and harmful to local governments' ability to reliably control their public safety radio services.

Commercial LMS service is not cost effective because providers will pass along their cost for obtaining spectrum during the competitive bidding process to their customers, (i.e., HC.) The net result of such cost shifting is an unauthorized and unintended tax on the states by the federal government. In exempting public safety services from competitive bidding, Congress sought to ease financial burdens on local governments charged with supplying public safety services, not force them to subsidize bids by commercial entities.

Likewise, if HC is forced to use a commercial LMS service provider, it will have to forgo control of that service. Public safety requirements are unique in that they encompass emergency situations that require timely and reliable service at any given moment. If HC holds an LMS spectrum license, it will be able to ensure the necessary level of service reliability. If HC must instead compete in an auction with wealthy private corporations, it will be unable to obtain a license and ensure adequate and reliable public safety service.

E. The Commission Failed to Adequately Explain Why the Exemptions of §1.2102 Do Not Apply to the Auction of LMS Spectrum.

²⁰ Amendment Of The Commission's Rules To Establish New Personal Communications Services, Memorandum Opinion and Order, Gen Docket No. 90-314, 9 FCC Rcd 4957, ¶¶ 88-90 (1994).

The Administrative Procedure Act requires that whenever the Commission issues a rule it provide a "concise general statement of [the] basis and purpose," for that rule.²¹ Although the agency is given wide discretion in its analysis of a matter, failure to provide an adequate discussion of the agency's reasoning can serve as a basis for overturning the rule.²²

In the Second Report and Order, the Commission fails to adequately describe the basis behind its conclusion that the exemptions of §1.2102(b) do not apply. The Commission states only that:

As amended by the Budget Act, Section 309(j) of the Communications Act provides that, "If ... mutually exclusive applications are accepted for any initial license or construction permit, then except as provided in paragraph (2) the Commission shall grant the license and construction permits for which mutually exclusive applications are accepted, *with certain exceptions not relevant here*, shall be granted by means of competitive bidding."²³

Given the scope of the BBA's amendments to the competitive bidding process, and the importance of public safety radio services to the protection of life, health and property, the Commission's blanket declaration that the exemptions are "not relevant here" does not adequately describe the reasoning for the Commission decision as required by §553(c).

²¹ 5 U.S.C. 553(c) (1996).

²² *Bechtel v. FCC*, 957 F.2d 873 (D.C. Cir. 1992).

²³ Second Report and Order, *supra* note 8 at ¶ 9.

IV.

Procedural Issues

A. Restructuring the LMS Licensing Framework to Permit Participation by Exempt Organizations.

In restructuring the LMS auction to accommodate applications that meet the criteria of §309(j)(2), the Commission should seek to meet its objectives of providing public safety services with access to new technology, and complying with Congress' intent that competitive bidding be used to award mutually exclusive licenses. These objectives are best served in one of the following two ways:

1. Grant any application for LMS spectrum that meets the criteria of §309(j)(2), and subject all other applications to competitive bidding. This process would guarantee public safety providers access to LMS technology and maintain the competitive bidding for commercial applicants.
2. Set aside spectrum for public safety use. This alternative would also guarantee access to spectrum for public safety licensees and promote auctions by subjecting the remaining spectrum to competitive bidding.

Another option is to designate all applications for LMS licenses – both exempt and non-exempt – for a comparative hearing. This solution, however, fails to adequately meet the objectives of Congress or the Commission because it neither guarantees access to LMS spectrum for public safety providers nor subjects commercial interests applying for mutually exclusive licenses to competitive bidding.

B. Reconsideration is Warranted Under the Commission's Rules.

Petitioner submits that pursuant to §1.106(c)(2), consideration of the facts presented in this petition is required to serve the public interest. Providing public safety services to protect life, health and property is one of the core duties of local government. Recognizing this essential governmental role, Congress explicitly maintained the exemption for public safety services from its general policy of auctioning available spectrum. The Commission's decision in the Second Report and Order effectively thwarts Congress' intent of promoting public safety services by limiting the availability of new technology for use in protecting the safety of life, health and property. The Commission must reconsider its rules in order to comply with Congress' intent and serve the public's interest. Indeed, because Section 309(j)(2) makes clear that the Commission lacks the statutory authority to auction licenses for public safety service, the Commission must now amend its rules.

Pursuant to §1.106, Petitioner also submits that although it has not previously participated in the LMS rulemaking process, its interests are adversely affected by the FCC's rulemaking in the Second Report and Order. Under the Second Report and Order, HC would not be able to exercise its public safety exemption to avoid having to purchase a license in the LMS auction set for December 15, 1998. As stated above, HC plans to utilize LMS services to enhance its capabilities in providing public safety services. In calculating the costs of such services, HC relied on the Commission's application of the competitive bidding process called for in the First Report and Order, and as amended by the BBA. The Second Report and Order, however, fails to make allowance for applications that meet the criteria of the exemptions set forth in 47 U.S.C. §309(j)(2). Unless the rules governing the LMS auction are altered, HC will be forced to incur substantial unanticipated expense to obtain a license to provide LMS services. Failure to amend

the rule may also lead to HC not being able to provide the funding necessary to secure spectrum from the competitive bidding process. Since the entire spectrum allocated for LMS services is subject to the December 15, 1998 auction, a lack of funding would jeopardize HC's ability to obtain spectrum to protect its citizens.

In addition, HC only recently became interested in the LMS auction proceedings. While the FCC was considering the proper structure for the upcoming LMS auction, HC was in the initial stages of evaluating the feasibility of LMS for public safety purposes. Like most local governments, HC does not regularly participate in the FCC process. And although pilot projects were undertaken in 1997, Petitioner did not finalize plans to implement LMS services until December of 1997, a full month after comments were due to the Commissions Memorandum Opinion and NPRM issued in September of 1997. HC first became aware that it might be subject to competitive bidding in July 1998 following the issuance of the Second Report and Order.

Conclusion

In light of the forgoing, Petitioner respectfully requests that the Commission reconsider its rule to recognize the applicability of the public safety exemption to the auction of LMS spectrum. Instead, the Commission should allow for applicants wishing to use LMS for non-commercial public safety purposes to obtain licenses for LMS spectrum without being subject to the competitive bidding process.

Respectfully submitted,

Hennepin County

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CERTIFICATE OF SERVICE

I, Carla Littlejohn, a secretary at the law firm of Powell, Goldstein, Frazer & Murphy, do hereby certify that on this 31st day of August, 1998, I caused copies of the foregoing "Petition for Partial Reconsideration for Hennepin County" to be served via hand delivery to the following:

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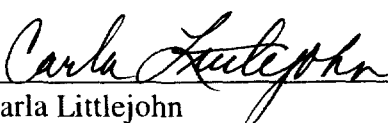
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